IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 833 of 2007

SMT.MANI
V/S
STATE & ANR.

Mr. PP CHOUDHARY, for the appellant / petitioner

Mr. NM LODHA, AAG, for the respondent

Date of Order : 21.3.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

Vide order dated 22.2.2007, show cause notice was issued, recording the contention of the learned counsel for the petitioner, that alongwith Annex.1, only Annex.2 has been given, while Annex.2 also is a notice for No Confidence Motion, and is not accompanied by any Motion for No Confidence.

In the writ petition, it is alleged by the petitioner that the petitioner received a notice dated 5th February 2007, issued by Chief Executive Officer on 7.2.2007, informing about the meeting of No Confidence Motion against her to be held on 23th February 2007, and alongwith that notice (Annex.1), the petitioner also received an application dated 5th February 2007, alleged to be submitted by some Members of the Gram Panchayat (Annex.2). It was alleged that this Annex.2 is addressed to

the Chief Executive Officer, and subject is indicated to be taking the proceedings for No Confidence Motion against the petitioner, and in fact, it is neither a notice, nor a Motion as prescribed in Section 37(1) & (2) of the Act. Then it is contended that in Annex.1, it is stated that the copy of the resolution is annexed, and it purports to treat Annex.2 as resolution, whereas the Members submitted this application as a notice for the Motion of No Confidence against the petitioner. It is contended that thus, Annex.2 being only a notice, and was not accompanied by any Motion of No Confidence, which was mandatory, in view of the Division Bench judgment of this Court in Ramu Ram Vs. Chief Executive Officer, reported in 2004(4) WLC 12, and therefore, it is bad.

A reply has been filed, contending that this Annex.2 produced by the petitioner is a Motion of No Confidence, and was accompanied by a notice in the prescribed form in Form No.1, which has been produced as Annex.R/1. Annex.2 has also been again produced by the respondent as Annex.R/2, and it is contended that the requirements of Section 37(1) & (2) have been complied with. Then it was contended that the judgment in Ramu Ram's case has no bearing, as it is on different facts. It is also contended, that in the rules, no form is prescribed for the Motion for No Confidence, as such, it can be in any shape and form, while the form prescribed is for the notice of intention to move No Confidence Motion, being form No.1,

under Rule 21, and therefore, it is contended, that Annex.1 and 2 are perfectly alright.

Then a rejoinder has been filed, contending that it seems that the notice Annex.R/1 is a document not submitted at the time of submission of Annex.P/2, as had it been there, then it should also be sent to the Panchayat, apart from the fact, that Annex.1 does not indicate that notice, Annex.1 was also submitted to Chief Executive Officer. Then it is also contended, that Annex.2 purports to be expressing no confidence in three persons, being Up Sarpanch, Ward Panch, and Sarpanch, while there is no provision for expressing no confidence against the Panch, and there is no provision for submitting such joint No Confidence Motion. Thus, it cannot be treated to be a No Confidence Motion. Then it is also contended, that Annex. R/1 was not forwarded alongwith Annex.1, either to the petitioner, or Gram Panchayat, or to any other Member of the Gram Panchayat, which is mandatory.

Arguing the writ petition, it was contended by Mr. Choudhary that Annex.2 is a notice of intention to make No Confidence Motion, and cannot be said to be the No Confidence Motion, for the purpose of Section 37. It was then submitted, that this purports to be against three persons, being Up Sarpanch, Ward Panch and Sarpanch, while in the first place, no No Confidence Motion can lie against a Ward Panch, and secondly that such a joint notice could not be given, and if given, it vitiates the notice. It was

then submitted, that according to Section 37, the notice of intention to make No Confidence Motion, so also the No Confidence Motion, were both required to be sent to the petitioner, and the Members, while the petitioner has been sent only Annexs.1 and 2, and that vitiates the notice, Annex.1. Learned counsel relied upon the judgment in Ramu Ram's case, photostat copy whereof has been produced as Annex.4.

On the other hand, Mr. Lodha, learned Additional Advocate General, submitted that in the writ petition, there is no pleading about the Motion being against three persons. In other words, in the writ petition, the Annexs.1 and 2 have not been challenged on this ground, and new ground could not be raised by way of rejoinder. Then it was also submitted, that a reading of Annex.2 does make it clear, that there is a punctuation mark therein to disjunct it to be a No Confidence Motion against the Sarpanch. Then it was submitted that the petitioner is wrong when it is contended that Annex.2 is the notice of intention to move No Confidence Motion, and separate motion is not there, inasmuch as, according to Rule 21, a notice of intention to move No Confidence Motion is required to be given in the prescribed proforma, being form No.1, while no such proforma is prescribed for the Motion of No Confidence, and therefore, it can be worded in any vocabulary, which may show, that the signatories are not having confidence, or have lost confidence, and it was submitted, that Annex.2

was submitted to the prescribed authority alongwith the notice of intention to make No Confidence Motion, being Annex.R/1. Thus, the notice of intention to make No Confidence Motion is Annex.R/1, and that was accompanied by the No Confidence Motion, being Annex.2 (Annex.R/2 as well), and therefore, there is no illegality therein. Then it was submitted that according to the provisions of Section 37(3), the notice of intention to move No Confidence Motion submitted by the persons is not required to be sent to the petitioner, or the Members, alongwith the Motion of No Confidence, rather only notice of the meeting fixed for consideration of No Confidence Motion is required to be given, while in the present case, that notice Annex.1 was accompanied by the copy of the No Confidence Motion, being Annex.2, as such, there is no error, to require interference in writ jurisdiction. It was also submitted that according to Section 37(3), Annex.R/1 and R/2 are required to be sent to Panchayat, which have duly been sent.

I have considered the submissions, and have gone through the judgment in Ramu Ram's case, so also the pleadings of the parties, and the documents annexed therewith.

The show cause notice was issued on 22nd February 2007 precisely, recording the contention of the learned counsel for the petitioner, as noticed above. While as transpires from Annex.R/1 and R/2, that apart from Annex.2, there was a separate notice of intention to move No

Confidence Motion being Annex.R/1, therefore, it is clear, that it was not one document, but two documents were submitted before the competent authority. The question then is, as to whether both the documents are only notice of intention to move No Confidence Motion, or Annex.2 is the requisite Motion for No Confidence. Learned counsel for the petitioner in this regard stressed upon the wordings used in Annex.2, wherein the word "notice" has been used, while according to Mr. Lodha, the "Notice" and "Motion" have significance on the anvil of the rules, inasmuch as, the notice has to be in the prescribed proforma, being form No.1, while there is no such requirement for the motion, and Annex.R/1 is a notice, in such circumstances, Annex.2 cannot be said to be treated to be a notice, and as Annex.2 was submitted alongwith Annex.R/1, and the contents of Annex.2 does clearly show, that the signatories are expressing No Confidence, it is required to be treated to be Motion.

In my view, the submissions of Mr. Lodha has force.

Rule 21 and Section 37 of the Rajasthan Panchayati Raj Rules read as under:

> "**Rule 21. Notice of Motion of No-confidence.**-(1) A written notice of intention to make motion expressing want of confidence under Sec. 37 in the Chairperson or Deputy Chairperson of a Panchayati Raj Institution shall be in Form I and shall be delivered to Chief Executive Officer/Zila Parishad in case of Sarpanch/Up-Sarpanch, Pradhan/Up-Pradhan

and to the Development Commissioner in case motion in against Pramukh/Up-Pramukh.

(2) Notice of meeting shall be sent by the Chief Executive Officer/Development Commissioner by post under certificate of posting not less than 15 clear days before the date of meeting and the date and the time appointed therefore in Form II to every directly elected Panch/Member at his ordinary place of residence. Copy of such notice shall also be put on the notice board of such Panchayati Raj Institution:

Provided that in case of a place where there is no post office, or where service of the notice cannot be affected expeditiously, such notice shall be served through Tehsildar concerned.

Sec.37. Motion of No-confidence in Chairpersons and Deputy Chairpersons.-(1) A motion expressing want of confidence in the Chairperson or Deputy Chairperson of a Panchayati Raj Institution may be made in accordance with the procedure laid down in the following sub-sections.

(2) A written notice of intention to make the motion in such form as may be prescribed, signed by not less than one-third of the directly elected members of the Panchayati Raj Institution concerned together with a copy of the proposed motion, shall be delivered, in person by any one of the members signing the notice to the competent authority.

(3) The competent authority shall thereupon-

(i) forward a copy of the notice, together with a copy of the proposed motion to the Panchayat in the case of a Sarpanch or Up-Sarpanch, to the Panchayat Samiti in the case of a Pradhan or Up-Pradhan and to the Zila Parishad in the case of a Pramukh or Up-Pramukh;

(ii) convene a meeting for the consideration of the motion at the office of the concerned Panchayati Raj Institution on a date appointed by him which shall not be later than thirty days from the date on which the notice under Sub-sec.(1) was delivered to him; and

(iii) give to the members a notice of not less than seven clear days of such meeting in

such manner as may be prescribed.

Explanation-In computing the period of thirty days specified in this sub-section, the period during which the convening of a meeting is stayed by a Court shall be excluded.

(4) The competent authority shall preside at such meeting:

Provided that if, he is unable to do so, the officer nominated by him shall so preside.

(5) A meeting convened under Sub-sec.(3) shall not be adjourned.

(6) As soon as the meeting convened under this section commences, the presiding officer shall read to the members present, the motion for the consideration of which the meeting has been convened and declare it to be open for debate.

(7) No debate on the motion under this section shall be adjourned.

(8) Such debate shall automatically terminate on the expiration of two hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. On the conclusion of the debate or on the expiration of the said period of two hours, whichever, is earlier, the motion shall be put to vote.

(9) The presiding officer shall not speak on the merits of the motion and he shall not be entitled to vote thereon.

(10) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon, shall, on the termination of the meeting be forwarded forthwith by the presiding officer in the case of the Chairperson or the deputy Chairperson-

(a) of a Panchayat	to the concerned Panchayat and Panchayat Samiti having jurisdiction on such Panchayat;

(b) of a Panchayat Samiti.	to the concerned Panchayat Samiti and the Zila Parishad having jurisdiction on such Panchayat Samiti;
(c) of a Zila Parishad	to the concerned Zila Parishad and the State Government.

(11) If the motion is carried with the support of not less than two-thirds of the elected members of the concerned Panchayati Raj Institution-

(a) the presiding officer shall cause the fact to be published by affixing a notice thereof on the notice board of the office of the concerned Panchayati Raj Institution and by notifying the same in the Official Gazette, and

(b) the concerned Chairperson or the Deputy Chairperson shall cease to hold office as such and vacate the office on and from the date on which the said notice is affixed on the notice board of the office aforesaid.

(12) If the motion is not carried as aforesaid or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same Chairperson or Deputy Chairperson shall be made until after the expiration of one year from the date of such meeting.

(13) No notice of motion under this section shall be made within two years of the assumption of office by a Chairperson or Deputy Chairperson.

(14) The quorum to constitute a meeting for the consideration of a no-confidence motion against the Chairperson or Deputy Chairperson shall be one-third of the total number of persons entitled to vote thereat."

A look at Section 37 and the judgment in Ramu Ram's case do show, that for complying with the requirements of Section 37, there has to be written notice

of intention to move No Confidence Motion, and such notice is to be accompanied by the copy of the proposed motion, and according to Rule 21, the written notice of intention to make Motion expressing want of confidence is required to be in form No.1. In my view, since Annex.R/1 is in form No.1, that is merely a notice of intention to make Motion of No Confidence, and it recites that a copy of the proposed motion is enclosed, and that enclosure is Annex.2. This is one aspect of the matter.

The other aspect of the matter is, that even otherwise, a look at Annex.2 does show, that of course it is mentioned in the opening para, that the signatories are submitting a notice of No Confidence, but then, a look at para 2 and 3 shows, that the signatories have clearly expressed, that for the last 2 years, since election, the signatories are not only troubled by the Sarpanch, rather entire village is troubled by the mismanagement, as the Sarpanch does not properly conduct the meeting, her son Mohan Singh misbehaves with the signatories, and the villagers, under the influence of alcohol, and behaved in unruly manner in the Panchayat matters. Likewise, it is also alleged, that for the last 2 years, the son of the Sarpanch is getting the works of the Panchayat done on his own will, and in the meetings, the information is not given to the signatories. With this, it is written as under:

"इसलिए हम सबका विश्वास इस सरपंच श्रीमती मानी देवी पर से

उठ चुका है"

In my view, this recital by itself is sufficient to hold Annex.2 to be the required motion for No Confidence. The mere user of the word "notice" hardly militates against the paper Annex.2 being the proposed motion of No Confidence, submitted alongwith Annex.R/1, and it is this proposed motion of No Confidence, that has been sent to the petitioner, and other Members, alongwith the notice Annex.1 being the notice of the proposed meeting.

So far as the contention about Annex.R/1 having not been sent to the petitioner, or the Members, is concerned, I do not find any such requirement to be there in Section 37, and during course of arguments, learned counsel for the parties also agreed, that the requirement is only of sending the notice of meeting. However, the proposed motion of No Confidence was also enclosed. Thus, on this ground also, no fault can be found.

Then taking up the contention, about Annex.2 being against three persons, being Ward Panch, Up Sarpanch, and Sarpanch, suffice it to say, that this is also of no adverse consequence, inasmuch as, firstly, the meeting was held for consideration of the motion of No Confidence against the petitioner only. It might be a situation, where on the basis of this motion, the meeting was held for considering the motion against the Up Sarpanch, and Sarpanch as well, probably in that event, the ground could

have been raised, claiming invalidity of the motion. Here this is not the situation. This is one aspect of the matter.

The other aspect of the matter is, that even otherwise, a bare reading of Annex.2 does clearly show, that the precise allegations have been raised in para 2 and 3, and all those allegations are against the Sarpanch, the petitioner, and not against the Up Sarpanch, or the Ward Panch. Then in para 3 of Annex.2, the signatories have expressly, and categorically expressed their no confidence, in the Sarpanch Smt. Mani Devi, and nobody else. In that view of the matter, even if I were to consider this argument, despite not being there in the writ, it does not help the petitioner.

Thus, the net result is that I do not find any force in the writ petition. The same is, therefore, dismissed summarily. Since the holding of the meeting fixed on 23.2.2007, for consideration of No Confidence Motion had been stayed by this Court, vide order dated 22.2.2007, that stay obviously stands vacated, and the respondents would be free to proceed ahead with Annex.R/1 and R/2, and fix the meeting in accordance with the law for consideration of Annex.2.

(N P GUPTA),J.

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